

Proceedings of the Arizona Game and Fish
Commission License Revocation and Civil
Assessment Hearings
Time Certain – 2:00 p.m.
Friday, December 5, 2008
Francisco Grande Hotel
26000 Gila Bend Highway
Casa Grande, Arizona 85293

PRESENT: (Commission)

(Director's Staff)

Chairman William H. McLean
Commissioner Robert D. Hernbrode
Commissioner Jennifer L. Martin
Commissioner Robert R. Woodhouse
Commissioner Norman W. Freeman

Director Larry D. Voyles
Deputy Director Gary Hovatter
Deputy Director Bob Broscheid
Assistant Attorney General Jim Odenkirk
Assistant Attorney General Shelley Cutts

Hearings on License Revocations for Violation of Game and Fish Codes and Civil Assessments
for the Illegal Taking and/or Possession of Wildlife

Presenter: Gene Elms, Law Enforcement Branch Chief

Mr. Elms presented the cases below to the Commission. Each of these cases were reviewed and it was determined that all cases met the criteria established in A.R.S. §15-714, §17-238, §17-314, §17-340, §17-362 and/or §17-363 for Commission action. The Commission and the respondents were provided with copies of the original court docket and case reports prepared by the officers along with copies of all other pertinent materials in each of these cases. All of these exhibits may be considered by the Commission in order to make a final determination. Each of the following individuals were legally noticed for this hearing.

<u>Name</u>	<u>Conviction</u>
Malik, Michael J.	Count B: discharge firearm within ¼ mile while taking elk
Boales, Cameron	Count A: take antelope during the closed season
Pullium, Earl R.	Count A: use of aircraft to locate wildlife during a big game hunt
Arrollado, John L. Jr.	Count A: obtain license/ tag by fraud/ misrepresentation Count B: obtain license/ tag by fraud/ misrepresentation
Soderman, Norman C.	Count A: obtain license/ tag by fraud/ misrepresentation
Smart, Joshua D.	Count A: knowingly take bear during the closed season
Crowley, Oney D.	Count A: harassing wildlife with vehicle, a class two misdemeanor Count B: littering hunting and fishing areas, a class two misdemeanor

Roll call was taken and the following were present: Michael Malik, Cameron Boales, Earl Pullium, Norman Soderman.

Mr. Elms stated that the civil assessment process is not intended to be punitive, but is a process allowing the Commission to recover financial damages to compensate the State for the loss of any wildlife. Hunter Education requirements are imposed as a remedial measure to increase knowledge and prevent future violations and not as punishment.

The Commission was asked to consider and take action on the license revocations and/or civil assessments for the individuals listed above.

Motion: Woodhouse moved and Martin seconded THAT THE COMMISSION VOTE TO TAKE JURISDICTION IN THESE CASES.

Vote: Unanimous

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Michael J. Malik

Malik was found guilty by the Pinetop/Lakeside Justice Court for: Count B: Discharge firearm within ¼ mile while taking elk; and sentenced Count B: Apology letters and 8 hours of community service.

Case Officer Wagner was present.

Malik was present and addressed the Commission along with his legal counsel, Bruce Griffen. Mr. Malik stated that the initial shot was legal, that the elk was mortally wounded and then moved close to the homes, that the Case Officer asked others and not him if he had permission from the homeowners to shoot within ¼ mile of their homes, and that the Case Officer directed him to take the second shot. Mr. Malik further stated that his Court case was under appeal and the Commission should not take action until that process is final.

Chairman McLean stated that the Commission is under a timeline to address these cases in a routine manner and that they have not received any requests from the Court or otherwise to stay these proceedings.

Commissioner Woodhouse questioned Mr. Malik on his statement that the elk would have died within an hour of the first shot (the second and third shots were taken a half hour after the first shot).

Commissioner Martin confirmed with Mr. Malik that he would have also told the Case Officer that he had the neighbor's permission to shoot near their homes because that is what he was told by his guides.

The Commission further discussed and questioned Mr. Malik about the details of the incident.

Chairman McLean confirmed with Mr. Malik that he had not heard about or seen any written permissions from the homeowners and that he was only informed verbally by his guide.

Commissioner Woodhouse questioned Mr. Malik whether his guide, John Babbitt, was paid for guiding or was paid a finder's fee since Mr. Babbitt was not present when the elk was shot. Mr. Malik stated that he was paid and performed activities as a guide.

Mr. Griffen confirmed with the Commission that they received Mr. Malik's pre-hearing memorandum dated December 2, 2008, and pointed out several observations in the case.

There were two people in the audience to address the Commission on Mr. Malik's behalf, but Ms. Cutts advised the Commission that this was an administrative hearing between Mr. Malik, his attorney, and the Commission and not the kind of proceeding where members of the public express their views to the Commission.

One of the homeowners was also present to address the Commission, but Mr. Odenkirk advised that since there was no prior notice that this person may testify, it may be overly prejudicial to allow her to speak.

Chairman McLean stated that the Commission would not allow non-parties to make a presentation to the Commission at this time.

Commissioner Hernbrode asked whether the letters of apology have been sent and the community service completed. Mr. Griffen stated that due to the appeals still pending, the sentencing is on hold by the Court.

Chairman McLean advised Mr. Griffen that if the Commission decides to revoke Mr. Malik's hunting license, that it will in part be because Mr. Griffen or Mr. Malik did not ask nor receive an order of stay in these proceedings.

Mr. Griffen stated for the record that he has been advised by the Department that if the Court overturns the judgment against Mr. Malik, that he could come back and petition the Commission to set aside the revocation. Further, Mr. Griffen moved that the Commission consider staying any decision today pending the outcome of the appeal.

Chairman McLean stated that the request was untimely at this point.

Mr. Odenkirk advised the Commission that since a motion was made by Mr. Griffen to stay a decision today, that the Commission as a whole should vote on the motion.

Motion: Chairman McLean called for a vote of the Commission. An aye vote stay these proceedings and a nay vote to deny Mr. Griffen's request.

Vote: Nay - McLean, Hernbrode, Martin, Woodhouse, Freeman
Unanimous to deny request

Chairman McLean stated for the record that the Department caused the elk skull and antlers to be appraised by Jack Jonas, which is in writing and is part the case file. The appraised value was

\$27,097 for the elk taken by Mr. Malik. The appraisal break down is \$14,995 for the skull plate and antlers (the record book value), and then \$102 for license fees, and \$12,000 for the cost of the hunt.

Motion: Hernbrode moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF MICHAEL J. MALIK TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST MICHAEL J. MALIK TO COLLECT THE AMOUNT OF \$8,000.00 FOR THE LOSS OF ONE (1) TROPHY BULL ELK; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Commissioner Woodhouse offered an amendment to change the civil damages to \$14,995, which was the record book value, excluding the cost of the hunt.

Commissioner Hernbrode accepted the amendment.

Commissioner Martin did not accept the amendment.

Motion: Woodhouse moved and McLean seconded THAT THE COMMISSION VOTE TO AMEND THE MOTION.

Vote: Aye – McLean, Hernbrode, Woodhouse, Freeman
Nay - Martin
Passed 4 to 1

Amended Motion: Hernbrode moved and McLean seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF MICHAEL J. MALIK TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST MICHAEL J. MALIK TO COLLECT THE AMOUNT OF \$14,995.00 FOR THE LOSS OF ONE (1) TROPHY BULL ELK; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND

ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Cameron L. Boales

Boales was found guilty by the Showlow Justice Court for: Count A: take antelope during the closed season; and sentenced Count A: 12 months unsupervised probation; life skills.

Case Officer Diamond was present.

Cameron Boales was present and addressed the Commission apologizing for his actions and taking responsibility. Cameron Boales' father addressed the Commission with his son considering that he was a minor.

The Commission questioned Cameron Boales and his father about the incident and about Cameron's school and other activities.

Officer Diamond addressed the Commission stating that Cameron Boales was remorseful throughout and cooperative in the investigation.

Motion: Hernbrode moved and Freeman seconded THAT CAMERON L. BOALES BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE AND PROVIDE PROOF OF COMPLETION TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH BEFORE APPLYING FOR ANY LICENSE TO HUNT IN THIS STATE.

Mr. Odenkirk advised the Commission that they need a revocation in order to impose the Hunter Education Course.

Motion withdrawn.

Motion: Hernbrode moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF CAMERON L. BOALES TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF ONE (1) YEAR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Commissioner Hernbrode suggested that Mr. Boales Sr. attend the Hunter Education Course along with his son.

Vote: Aye - McLean, Hernbrode, Woodhouse, Freeman
Nay - Martin
Passed 4 to 1

Commissioner Martin explained her vote stating that while she appreciates the Commission's leniency, even a really good kid who makes a mistake and is remorseful should receive a more significant consequence than a one year license revocation.

These proceedings temporarily recessed while the Commission addressed Agenda Item # 9: Call to the Public.

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Hearings recessed at 3:36 p.m.

Hearings continued at 3:42 p.m.

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Norman C. Soderman

Soderman was found guilty by the Bullhead Justice Court for: Count A: obtain license/ tag by fraud/ misrepresentation; and sentenced Count A: Fined: \$50.00.

Case Officer Antolik was not present.

Soderman was present and stated that he didn't realize he was doing anything illegal. He spends six months of the year in Arizona and owns a home in Arizona.

The Commission questioned Mr. Soderman and confirmed that he also held a residence license in another state.

Commissioner Martin confirmed with Mr. Soderman that when he bought the license and provided his address, he stated that he only lived in Arizona six months of the year and was not advised that he may not meet the resident requirement.

Motion: Woodhouse moved and Hernbrode seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF NORMAN C. SODERMAN TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Aye - McLean, Hernbrode, Woodhouse, Freeman
Nay - Martin

Passed 4 to 1

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Hearings recessed for a break at 3:51 p.m.

Hearings continued at 4:11 p.m.

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John L. Arrollado, Jr.

Arrollado was found guilty by the Kingman/Cerbat Justice Court for: Count A: Obtain license/ tag by fraud/ misrepresentation; Count B: Obtain license/ tag by fraud/ misrepresentation; and sentenced Count A: Fined \$340.00; and Count B: Fined \$340.00 suspended.

Arrollado was not present.

Motion: Freeman moved and Hernbrode seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JOHN L. ARROLLADO JR. TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Joshua D. Smart

Smart was found guilty by the Snowflake Justice Court for: Count A: knowingly take bear during the closed season; and sentenced Count A: Fined \$100.00.

Smart was not present.

Mr. Elms noted that this was Mr. Smart's third offense.

Motion: Woodhouse moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JOSHUA D. SMART TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND THAT HE BE DENIED ANOTHER FOR LIFE, AND THAT HIS CURRENT GUIDE LICENSE BE REVOKED FOR LIFE; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY

TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Oney Duwain Crowley

Mr. Elms requested that this case be withdrawn and that the Commission not take any action on this case. Information received by the Department in evaluating the merits of this case do not meet the Department's standards, and by the time this was determined, it was too late to remove it from the agenda.

Motion: Freeman moved and Woodhouse seconded THAT THE COMMISSION VOTE TO TAKE NO ACTION ON THIS CASE AT THIS TIME.

Vote: Unanimous

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Chairman McLean explained to Mr. Pulliam that his case would be briefly delayed while the Commission considered Agenda Item #13: Request to Approve the Notice of Docket Openings and Notice of Proposed Rulemakings to Amend Article 3 Rules and additional affected rules in other articles, addressing the Taking and Handling of Wildlife.

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Hearings recessed at 4:20 p.m.

Hearings continued at 4:57 p.m.

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Earl R. Pulliam

Pulliam was found guilty by the Williams Justice Court for: Count A: use of aircraft to locate wildlife during a big game hunt; and sentenced Count A: Fined \$300.00.

Pulliam was present and addressed the Commission stating that he was not aware that a bear hunt was going on or that he was doing anything illegal. Also, the Department's regulations show black bear habitat to only be near the east boundary of Unit 10 and according to the Department's hunt statistics, there has been no black bear killed in Unit 10 for the past 10 years.

Ms. Pulliam addressed the Commission on her husband's behalf. Ms. Pulliam arranged the hunt as a birthday present for Mr. Pulliam and while making those arrangements, was not informed of the bear hunt or any potential illegal activity.

Case Officer Ozment was present and answered questions for the Commission and stated that Mr. Pulliam was very cooperative and she did not believe this was an egregious act; however,

there was a bear season going on and it wasn't for her to make that decision and so she wrote the citation. Further, Officer Ozment did not believe that Mr. Pulliam should have his hunting license taken away; however, she would leave that to the Commission's expertise.

Motion: Martin moved and Hernbrode, Freeman and Woodhouse seconded THAT THE COMMISSION VOTE TO TAKE NO FURTHER ACTION IN THIS CASE AGAINST EARL R. PULLIAM.

Vote: Unanimous

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These hearings concluded at 5:11 p.m.

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